

FILED**FOR PUBLICATION**

JUL 01 2014

UNITED STATES COURT OF APPEALS

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

In re: K.K.

No. 14-71875

K.K.,

D.C. No. 1:13-cr-00735-LEK-1

1:14-mc-00102-LEK

1:14-mc-00119-LEK

Petitioner,

OPINION

v.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII,

Respondent,

GERARD K. PUANA,

Real Party in Interest.

Petition for Writ of Mandamus to the United States District Court
for the District of Hawaii

Leslie E. Kobayashi, District Judge, Presiding

Submitted June 27, 2014*

Filed July 1, 2014

* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Before: GOULD, MURGUIA, and WATFORD, Circuit Judges.

PER CURIAM:

This is a petition for a writ of mandamus filed pursuant to 18 U.S.C. § 3771, the Crime Victims' Rights Act ("CVRA"). Petitioner, a victim of a mailbox theft crime, challenges district court orders issued on June 13, and June 18, 2014, denying in part motions to quash two subpoenas duces tecum whose issuance defendant has requested under Federal Rule of Criminal Procedure 17(c)(3).

In reviewing CVRA mandamus petitions, we are not required to balance the factors outlined in *Bauman v. United States District Court*, 557 F.2d 650 (9th Cir. 1977). *See Kenna v. U.S. Dist. Court*, 435 F.3d 1011, 1017 (9th Cir. 2006). Rather, this court "must issue the writ whenever we find that the district court's order reflects an abuse of discretion or legal error." *Id.*

The district court did not abuse its discretion or commit legal error in denying the motions to quash. The information sought by defendant meets the standard for issuing a Rule 17(c) subpoena. *See United States v. Nixon*, 418 U.S. 683, 699-700 (1974) (stating standard). Furthermore, in ordering production of the requested documents, the district court appropriately balanced the victim's privacy interests against the defendant's right to "investigate the case and prepare a defense for trial." *Michigan v. Harvey*, 494 U.S. 344, 348 (1990). Finding no abuse of

discretion or legal error, the petition for a writ of mandamus pursuant to 18 U.S.C. § 3771 is denied.

However, given the sensitive nature of the documents sought, production and disclosure of the documents on July 2, 2014 shall initially be limited to the district court. The district court shall then conduct an *in camera* review of the produced documents to determine whether, in light of the information they contain and their relevancy to the issues to be raised at trial, their disclosure to defense counsel would be “unreasonable or oppressive” under Rule 17(c)(2), such that production to defense counsel should be denied. Upon review of the documents *in camera*, the district court may place additional limits on defense counsel’s use of the documents at trial.

DENIED.

Counsel Listing

Kevin Paul Hisami Sumida, Sumida & Associates LLC, Honolulu, Hawaii, for Petitioner.

Peter C. Wolff, Jr., Federal Public Defender, and Alexander Silvert, First Assistant Federal Defender, Honolulu, Hawaii, for Real Party in Interest Gerard K. Puana.